

II. Public Comment Procedures

OSM is requesting public comment to assist OSM in making its decision on which approach to use in Colorado, New Mexico, and Utah to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

A. Written Comments

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

B. Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., mst on April 21, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

C. Public Meeting

If only a few persons request an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss recommendations on how OSM and Colorado, New Mexico, or Utah should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may

request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

Dated: March 31, 1995.

Russell F. Price,

Acting Assistant Director, Western Support Center.

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BILLING CODE 4310-05-M

30 CFR Parts 915, 916, and 925

Iowa, Kansas, and Missouri Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Announcement of public comment period and opportunity for public hearing.

SUMMARY: OSM is requesting public comment that would be considered in deciding how to implement in Iowa, Kansas, and Missouri underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments to SMCRA and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if Iowa's, Kansas', and Missouri's regulatory programs (hereinafter referred to as the "Iowa, Kansas, and Missouri programs") currently have adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with Iowa, Kansas, and Missouri and consideration of public comments, OSM will decide whether initial enforcement in Iowa, Kansas, and Missouri will be accomplished through the State Program amendment process or by State enforcement, by interim direct OSM

enforcement, or by joint State and OSM enforcement.

DATES: Written comments must be received by 4:00 p.m., c.d.t. on May 8, 1995. If requested, OSM will hold a public hearing on May 1, 1995, concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions, should be implemented in Iowa, Kansas, and Missouri. Requests to speak at the hearing must be received by 4:00 p.m., c.d.t. on April 21, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand-delivered to Michael C. Wolfrom, Acting Director, Kansas City Field Office at the address listed below.

Copies of the applicable parts of the Iowa, Kansas, and Missouri programs, SMCRA, the implementing Federal regulations, information provided by Iowa, Kansas, and Missouri concerning their authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays.

Michael C. Wolfrom, Acting Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte, Room 500, Kansas City, MO 64105, Telephone: (816) 374-6405.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Acting Director, Kansas City Field Office, Telephone: (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Public Law 102-486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires

prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR part 817 to implement the performance standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722-16751).

30 CFR 817.121(c)(2) requires in part that:

The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed below, enforcement may be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements. OSM will decide which of the following enforcement approaches to pursue.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the

State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in item numbers (3) and (4) above, OSM would directly enforce

in total or in part its Federal statutory or regulatory provisions until the State adopts and OSM approves, under 30 CFR part 732, the State's counterparts to the required provisions. However, as discussed in item number (1) above, OSM could decide not to initiate direct Federal enforcement and rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Iowa

By letter to Iowa dated December 14, 1994, OSM requested information from Iowa that would help OSM decide which approach to take in Iowa to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Iowa program requirements (Administrative Record No. IA-413). As of March 21, 1995, Iowa had not responded to OSM's request.

OSM has determined that no underground coal mines were operating in Iowa after October 24, 1992.

OSM's review of Iowa's program indicates that Iowa has not revised its

statute to incorporate counterparts to the requirements of section 720 of SMCRA. Also OSM's review indicates that (1) at Iowa Administrative Code (IAC) 27-40.64(207), Iowa incorporated 30 CFR 817.41 as it existed on July 1, 1992, and (2) at IAC 27-40.64(6), Iowa incorporated 30 CFR 817.121(c)(2) as it existed on July 1, 1992, except the phrase "To the extent required under applicable provisions of State law."

D. Enforcement in Kansas

By letter to Kansas dated December 14, 1994, OSM requested information from Kansas that would help OSM decide which approach to take in Kansas to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Kansas program requirements (Administrative Record No. KS-594). By letter dated February 3, 1995, Kansas responded to OSM's request (Administrative Record No. KS-595).

Kansas stated that no underground coal mines were operating in Kansas after October 24, 1992.

Kansas indicated that at Kansas Administrative Regulations (KAR) 47-9-1(d)(40), it adopted 30 CFR 817.121 as it existed on July 1, 1990, and is in the process of promulgating regulations adopting 30 CFR 817.121 as it was written on July 1, 1992. Kansas stated that this revised regulation will authorize the repair of structural damage caused by subsidence in accordance with section 720(a)(1) of SMCRA as it existed on December 31, 1993.

Kansas further indicated that it has the authority to investigate complaints concerning water loss through the material damage criteria of KAR 47-9-1(d)(40), which adopts by reference 30 CFR 817.121(a), and through its hydrologic balance regulations at KAR 47-9-1(d)(7), which adopts by reference 30 CFR 817.41. It further stated that any drinking domestic, or residential water supply, or other beneficial use as defined by the Kansas Water Appropriations Act, which is impaired by diversion or is otherwise impaired, would have to be replaced according to Kansas Statutes Annotated (KSA) 82a-706b. Lastly, Kansas stated that any waters of the state whose quality is adversely impacted will have to be cleaned up at the owner's expense as provided for in KSA 65-171 *et seq.*

Kansas concluded that the above-discussed regulations and statutes adequately encompass the requirements of section 720(a) of SMCRA.

E. Enforcement in Missouri

By letter to Missouri dated December 14, 1994, OSM requested information from Missouri that would help OSM decide which approach to take in Missouri to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Missouri program provisions (Administrative Record No. MO-619). By letter dated February 16, 1995, Missouri responded to OSM's request (Administrative Record No. MO-620).

OSM determined that no underground coal mines were operating in Missouri after October 24, 1992.

Missouri stated that the subsidence plan permitting requirements at 10 Missouri Code of State Regulations (CSR) 40-6.120(11) and the performance standards for subsidence control at 10 CSR 40-3.280 generally correspond to the requirements of section 720(a)(1) of SMCRA. In these regulations, Missouri requires the permit applicant to submit a plan detailing steps to prevent subsidence damage or mitigate effects of that damage to "structure or renewable resource lands." Missouri interprets "structures to broadly mean any building, whether occupied or unoccupied, and it defines "renewable resource lands" as "aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silviculture production for food and fiber, and grazing lands."

Missouri also stated that the underground mining permit requirements for alternate water supply at 10 CSR 40-6.110(8) and protection of hydrologic balance requirements at 10 CSR 40-6.120(5)(b)3., together with the performance requirements for water rights replacement at 10 CSR 40-3.200(14), generally correspond to section 720(a)(2) of SMCRA.

Missouri indicated that all of the above-discussed regulations have effective dates preceding October 24, 1992, and appear to provide Missouri authority to enforce the provisions of section 720 of SMCRA.

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this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Kansas City Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

B. Public Hearing

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Dated: March 31, 1995.

Russell F. Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 95-8466 Filed 4-5-95; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 63

Former Spouse Payments From Retired Pay

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Proposed rule; amendment.

SUMMARY: This proposed rule amends part 63 of title 32 of the Code of Federal Regulations to reflect amendments to the Uniformed Services Former Spouses' Protection Act and to clarify the language in § 63.6(c)(8) concerning court orders that provide for a division of retired pay by means of a formula. Guidance implementing the amendments have been incorporated into Volume 7, Part B of the DoD Financial Management Regulation, DoD 7000.14-R, but has not been previously published in the **Federal Register**.

DATES: Comments must be received June 6, 1995.

ADDRESSES: Interested parties should submit written comments to: Deputy Director for Finance, Defense Finance and Accounting Service, 1931 Jefferson Davis Highway, Arlington, VA 22240-5291, Attention: Military Pay Directorate.

FOR FURTHER INFORMATION CONTACT: Mr. Fiti Malufau, (703) 602-5279.

SUPPLEMENTARY INFORMATION: Because of the large number of comments anticipated, we do not plan to acknowledge or respond to individual comments but will address the comments, as appropriate, in the preamble of the final rule.

To avoid undue hardship on those seeking to enforce support orders providing for a division of retired pay, the Department of Defense will continue to follow its current implementing guidance with regard to the amendments to the Uniformed Services Former Spouses' Protection Act and, effective April 1, 1995, will accept court orders containing formulas that are consistent with the proposed rule until a final rule is issued.

Executive Order 12866, "Regulatory Planning and Review"

The Under Secretary of Defense (Comptroller) has determined that 32 CFR part 63 is not a significant regulatory action. The rule does not:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96-354, "Regulatory Flexibility Act of 1980" (5 U.S.C. 601-612)

The Under Secretary of Defense (Comptroller) has certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601-612) because it affects only certain military members and their former spouses.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. 3501-3520)

The Under Secretary of Defense (Comptroller) has certified that this amendment of 32 CFR part 63 does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520).

List of Subjects in 32 CFR Part 63

Alimony, Child support, Retirement, Uniformed Services, Payments to former spouses, Military retired pay.

Accordingly, 32 CFR part 63 is proposed to be amended as follows:

PART 63—FORMER SPOUSE PAYMENTS FROM RETIRED PAY

1. The authority citation for part 63 continues to read as follows:

Authority: 10 USC 1408.

2. Section 63.6 is proposed to be amended by adding the word "certified" after the word "A" in paragraph (b)(1)(ii), by revising paragraphs (b)(5), (c)(8) and (e), and by adding a new paragraph (h)(13) to read as follows:

§ 63.6 Procedures.

* * * * *

(5) The designated agent for each uniformed service is:

(i) Army, Navy, Air Force and Marine Corps: Defense Finance and Accounting Service, Cleveland Center (Code LF), PO Box 998002, Cleveland, OH 44199-8002.

(ii) Coast Guard: United States Coast Guard, Commanding Officer (L), Pay and Personnel Center, 444 Quincy Street, Topeka, KS 66683-3591.

(iii) Public Health Service: Office of General Counsel, Department of Health and Human Service, Room 5362, 330 Independence Avenue, SW, Washington, DC 20201.

* * * * *

(c) * * *

(8) The court order shall require payment of child support or alimony or, in the case of a division of property, provide for the payment of an amount of disposable retired or retainer pay, expressed as a dollar amount or as a percentage. Court orders specifying a percentage or fraction of disposable retired pay shall be construed as a percentage or a fraction of disposable retired pay. A court order that provides for a division of retired pay by means of a formula wherein the elements of the formula are not specifically set forth or readily apparent on the face of the court order will not be honored unless clarified by the court. For orders served on or after April 1, 1995, an exception to requiring such a clarifying order will be made only if in accordance with (c)(8) (i), (ii) and (iii) of this section:

(i) The order otherwise qualifies for direct payment but the parties are divorced when the member is on active duty. In that situation, where the pertinent court order is expressed in terms of a formula and the element missing from that formula is the member's years of service, then the designated agent will supply the member's years of service in terms of whole months to arrive at a percentage of disposable pay due the former spouse. Partial months of service will be dropped. The member's service that is creditable for retirement percentage multiplier purposes (See Chapter 1, Section C of DoD Financial Management Regulation, DoD 7000.14-R, Volume 7, Part B¹) will be used in all formulas. In the case of reserve members, points earned during the member's marriage must be contained in the court order. The designated agent will supply total retirement points earned by a reservist

¹ Copies may be obtained from the Deputy Director for Finance, Defense Finance and Accounting Service, 1931 Jefferson Davis Highway, Arlington, Virginia 22240-5291, Attention: Military Pay Directorate.